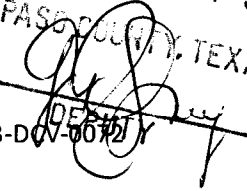


FILED  
NORMA L. FAVELA  
DISTRICT CLERK

2013 FEB 27 PM 1:50

EL PASO COUNTY, TEXAS

BY   
2013-D-0072

IN EL PASO COUNTY TEXAS  
34<sup>TH</sup> DISTRICT COURT

CARL STARR,  
Plaintiff,

v.

JOHN COOK, ANN LILLY, SUSIE BYRD,  
STEVE ORTEGA, EDDIE HOLGUIN JR,  
CARL ROBINSON, MICHEL NOE,  
AND CORTNEY NILAND, *all in their  
Official Capacities,*  
Defendants.

PLAINTIFFS' VERIFIED 2nd AMENDED PETITION

2013 OCTO 07 2

1. PARTIES, VENUE AND JURISDICTION

Discovery is intended to be conducted under Level 1. Plaintiff is a resident of El Paso, whose mailing address is POB 1561 El Paso, TX 79948. The Defendants are Public Officials who can be served at: City Hall, El Paso, TX 79901. The court has jurisdiction over the defendants based upon both specific and general jurisdiction. The court has subject matter jurisdiction because the issue in controversy exceeds the minimum thresholds. Venue is proper in this county per TCPRC 15.002(a)(1).

2. FACTS- CAUSE OF ACTION/CLAIM-ULTRA VIRES

On Jan. 8<sup>th</sup> 2013 the Defendants enacted a Payday Loan Ordinance: [www. PaydayLOrd.notlong.com](http://www.elpasotexas.gov/muni_clerk/agenda/01-08-13/01081308A.pdf)  
[http://www.elpasotexas.gov/muni\\_clerk/agenda/01-08-13/01081308A.pdf](http://www.elpasotexas.gov/muni_clerk/agenda/01-08-13/01081308A.pdf) Plaintiff has a Contract Loan with WFC for \$753 which exceeds 20percent of Plaintiffs income. Under this Ordinance Plaintiff can only borrow \$250. The WFC contract does not expire until after July 2013 with more than 4 installments. Under the ordinance only 4 installments are allowed. The actions represent the policies/ practices /unwritten practice of the defendants each and collectively in their official capacities. The actions in question were adopted, hold force, are maintained, enforced and executed buy the defendants, city officers, agents and those acting in concert under color and authority of law and is the casual link to the harm to Plaintiff. Defendants action of passing/enacting/enforcing the Ordinance interferes with a contract plaintiff made with World Finance Corporation [WFC]. Defendants were aware of the contract and or the thousands of contracts throughout the city yet willfully/ intentionally interfered with the contract[s], with no legitimate legal right to do so thus ultra vires. The defendants proximately has

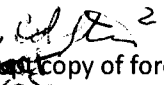
caused damage to the plaintiff of economic enjoyment of \$503, the difference between \$753 [current loan] and \$250 [loan max under ordinance] and or the prospective loss of \$503 in next prospective Contractual Relations with WFC. Texas has not given explicit Authority to defendants to regulate Payday Loans in the manner at question, Defendants actions are rogue Ultra Vires. Plaintiff objects to the ongoing and prospective expenditures of public funds enacting/enforcing the Ultra Vires actions. [The ordinance also is vague and unequal re pawnshops re more than 4 interest installments and redeem value over 20% mo. Income, forcing one to accept lower loan then lose higher value if not redeemed. ]

### 3. CASE LAW

Coastal Habitat Alliance v. PUC of Tex. 294 S.W.3d 276 July 8, 2009, Filed. "This Court has held that "[a]n injury need not affect 'vested' property rights to confer standing" and, thus, "the harm [for purposes of standing] may be economic, recreational, or environmental." Texas Rivers Prot. Ass'n v. Texas Natural Res. Conservation Comm'n, 910 S.W.2d 147 "Declaratory judgment actions may be maintained against the government to have an ultra vires act declared void. Texas Highway Com'n, 372 S.W.2d 525 Cobb 190 S.W.2d 709 (Declaratory judgment action is not a suit against the State because it does not seek damages). A plaintiff may seek injunctive relief when the government acts in a way that exceeds its authority. Director, Etc. 600 S.W.2d 264. HN9 Like **taxpayer** standing, **immunity** for an **ultra vires** act is only a waiver with respect to restraining prospective governmental expenditures. Heinrich, 284 S.W.3d at 376."

### 4. PRAYER

WHEREFORE; premises considered, plaintiff asks the court to cite the defendant to appear and answer herein and that on final trial the court; 1. Issue a Permanent Injunction, as plaintiff faces irreparable harm and no other adequate remedy at law, preventing enforcement and enjoining the ultra vires prospective government expenditures . 2. Issue a Declaratory Judgment. All such other and further relief [including prospective] at law or in equity to which Plaintiff may be entitled.


Respectfully Submitted,  Carl Starr, PO Box 1561, El Paso, TX, 79948 [carlstarr@hotmail.com](mailto:carlstarr@hotmail.com)  
I certify a true and correct copy of foregoing was email-faxed to Asst. City Atty Krohn 2-25-13.

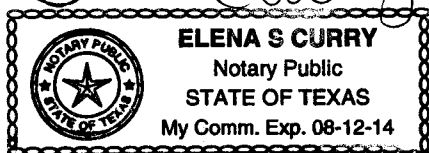
VERIFICATION

COUNTY OF EL PASO  
STATE OF TEXAS

Before me, a notary public, on this day personally appeared Carl Starr, known to me to be the person whose name is subscribed to the foregoing document and, being by me first duly sworn, declared that the statements therein contained are true and correct.

 2.25.13

 2-25-13



IN EL PASO COUNTY TEXAS  
34TH DISTRICT COURT

CARL STARR,  
Plaintiff,

2013-DCV-0072

v.

JOHN COOK, ANN LILLY, SUSIE BYRD,  
STEVE ORTEGA, EDDIE HOLGUIN JR,  
CARL ROBINSON, MICHEL NOE,  
AND CORTNEY NILAND, *all in their*  
*Official Capacities,*  
Defendants.

MOTION FOR LEAVE OF COURT TO FILE THE ATTACHED AMENDED PETITION

COMES NOW the plaintiff and motions for leave to file the attached 2nd amended petition. Defendants filed their plea to the jurisdiction 2-11-13 however plaintiff did not receive it in mail until 2-21-13. Defendants Answer, Plea to the Jurisdiction and Affirmative Defenses did not address Plaintiff's Ultra Vires Claim.

Respectfully Submitted,

 2-25-13

I Certify a true and correct copy of foregoing was emailed-faxed to Asst. City Attorney Krohn 2-25-13.

 2-25-13

IN EL PASO COUNTY TEXAS  
34<sup>TH</sup> DISTRICT COURT

CARL STARR,  
Plaintiff,

2013-DCV-0072

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JOHN COOK, ANN LILLY, SUSIE BYRD,  
STEVE ORTEGA, EDDIE HOLGUIN JR,  
CARL ROBINSON, MICHIEL NOE,  
AND CORTNEY NILAND, *all in their*  
*Official Capacities,*  
Defendants.

ORDER

The court having considered the motion for leave GRANTS it the Clerk shall file stamp the 2<sup>nd</sup> Amended  
Petition.

Date \_\_\_\_\_

Judge \_\_\_\_\_

WORLD FINANCE CORPORATI 210 SOUTH MESA ST, STE C EL PASO, TX 79901  
915-533-5929

ACCOUNT #  
01-040805

DATE	PAYMENT	----- APPLIED ----- OTHER LATE CHG	PRINCIPAL	NEW BALANCE	PAST DUE
01/07/13	\$115.00		\$115.00	\$920.00	\$ .00

YOU CAN GET \$84.42 TODAY

CARL MUNOZ STARR  
815 LA CRUZ  
EL PASO, TX 79902

LAST DUE: \$ .00  
TODAY DUE: 01/07/13 \$ .00  
NEXT DUE: 02/27/13 \$115.00

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2013-DCU-0072

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February 19, 2013

Rec 2-21-13  
C-S.

Carl Starr  
P.O. Box 1561  
El Paso, Texas 79948

Re: *Carl Starr vs. John Cook, et. al.*  
Cause No. 2013DCV0072

Dear Mr. Starr:

Enclosed with this correspondence is file stamped copy of Defendants' Original Answer, Plea to the Jurisdiction and Affirmative Defenses.

Sincerely,

Kenneth A. Krohn  
Assistant City Attorney

KAK/ba

Enclosure

Mayor  
John F. Cook

City Council

District 1  
Ann Morgan Lilly

District 2  
Susannah M. Byr

District 3  
Emma Acosta

District 4  
Carl L. Robinson

District 5  
Dr. Michiel R. Noe

District 6  
Eddie Holguin Jr.

District 7  
Steve Ortega

District 8  
Cortney Carlisle M

City Manager  
Joyce A. Wilson

**OFFICE OF THE CITY ATTORNEY**

2 Civic Center Plaza, 9<sup>th</sup> Floor / El Paso, Texas 79901 / 915 541-4550 / Facsimile 915 541-4710 [www.elpasotexas.gov](http://www.elpasotexas.gov)  
13-1019-060/Starr PL#162126

